

1 SUSAN J. WELDE (SBN 205401)  
2 MURCHISON & CUMMING, LLP  
3 801 S. Grand Ave, 9<sup>th</sup> Floor  
4 Los Angeles, California 90017  
5 Telephone: (213) 623-7400  
6 Email: swelde@murchisonlaw.com

7 Tamra J. Miller (SBN 224040)  
8 Margaret M. Schuchardt (*pro hac vice* to be filed)  
9 JASZCZUK P.C.  
10 311 South Wacker Dr., Suite 3200  
11 Chicago, IL 60606  
12 Telephone: (312) 442-0312  
13 Email: tmiller@jaszczuk.com  
14 Email: mschuchardt@jaszczuk.com

15 Attorneys for Defendant JACKSON  
16 HEWITT TAX SERVICE INC.

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20 JEFF HANCOCK, individually and  
21 on behalf of all others similarly  
22 situated,

23 Plaintiff,

24 vs.

25 JACKSON HEWITT TAX  
26 SERVICE INC.,

27 Defendant.

28 Case No.: 2:19-CV-02602-PSG-PJW

29 **DEFENDANT'S NOTICE OF**  
30 **MOTION AND MOTION TO**  
31 **DISMISS, TRANSFER, OR**  
32 **STRIKE; MEMORANDUM OF**  
33 **POINTS AND AUTHORITIES;**  
34 **DECLARATIONS OF MARGARET**  
35 **SCHUCHARDT AND AMORI**  
36 **LANGSTAFF IN SUPPORT;**  
37 **[PROPOSED] ORDER**

38 Date: July 22, 2019

39 Time: 1:30pm

40 Courtroom: 6A

41 Judge: The Honorable Philip S.  
42 Gutierrez

43 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

44 **PLEASE TAKE NOTICE** that on July 22, 2019, at 1:30 pm, before the  
45 Honorable Philip S. Gutierrez, in Courtroom 6A of the United States District Court  
46 for the Central District of California, located at 350 W. 1st Street, Los Angeles, CA  
47 90012, Defendant Jackson Hewitt Tax Service, Inc. ("Jackson Hewitt" or  
48 "Defendant"), will and hereby does move to dismiss Plaintiff's Complaint for lack  
49 of personal jurisdiction pursuant to Federal Rule 12(b)(2), or, in the alternative, to

1 dismiss Plaintiff's Complaint for improper venue pursuant to Federal Rule 12(b)(3),  
2 or, in the alternative, to transfer this action to the District of New Jersey or the  
3 Western District of Texas pursuant to 28 U.S.C. 1404(a), or, in the alternative, to  
4 strike Plaintiff's class allegations pursuant to Federal Rule 12(f).

5 This motion is made following the conference of counsel pursuant to L.R. 7-  
6 3, which took place on May 17, 2019 and May 24, 2019. Counsel discussed the  
7 bases for this motion but were unable to resolve the issues set forth herein.

8 | Dated: May 31, 2019

Respectfully submitted,

By: /s/ Susan J. Welde  
Susan J. Welde (SBN 205401)  
801 S. Grand Ave, 9th Floor  
Los Angeles, California 90017  
Telephone: (213) 623-7400  
Email: swelde@murchisonlaw.com  
Facsimile: (213) 623-6336  
swelde@murchisonlaw.com

Tamra J. Miller (SBN 224040)  
Margaret M. Schuchardt (*pro hac vice*  
to be filed)  
JASZCZUK P.C.  
311 South Wacker Dr., Suite 3200  
Chicago, IL 60606  
Telephone: (312) 442-0312  
tmiller@jaszczuk.com  
mschuchardt@jaszczuk.com

Attorneys for Defendant JACKSON  
HEWITT TAX SERVICE INC.

## TABLE OF CONTENTS

TABLE OF CONTENTS

Page

3	MEMORANDUM OF POINTS AND AUTHORITIES .....	1
4	FACTUAL BACKGROUND .....	1
5	ARGUMENT .....	3
6	I. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION .....	4
7	A. Legal Standard.....	4
8	B. There Is No General Personal Jurisdiction Over Jackson Hewitt. ....	5
9	C. There Is No Specific Personal Jurisdiction Over Defendant.....	6
10	1. <i>Defendant Did Not Purposefully Direct The Alleged Activities At California.</i> .....	6
11	2. <i>Plaintiff's TCPA Claim Does Not Arise Out Of Or Relate To Any California-Related Activities.</i> .....	9
12	3. <i>The Exercise Of Jurisdiction Over Defendant In This Case Would Be Unreasonable.</i> .....	10
13	II. VENUE IS IMPROPER IN THIS DISTRICT .....	11
14	III. In The Event Venue Is Proper Here, The Case Should Nevertheless Be Transferred .....	12
15	A. Plaintiff Could Have Filed In The District Of New Jersey Or The Western District Of Texas. ....	12
16	B. Transfer Serves The Convenience Of The Parties And The Witnesses And The Interest Of Justice.....	13
17	IV. PLAINTIFF'S CLASS ALLEGATIONS SHOULD BE STRICKEN BECAUSE PLAINTIFF SIGNED A VALID CLASS-ACTION WAIVER .....	15
18	V. CONCLUSION .....	17

## TABLE OF AUTHORITIES

	<u>Page</u>
<b>CASES</b>	
<i>Abedi v. New Age Med. Clinic PA</i> , No. 1:17-CV-1618 AWI SKO, 2018 U.S. Dist. LEXIS 105932, at *6 (E.D. Cal. June 25, 2018) .....	9
<i>ACA Int'l v. FCC</i> , 885 F.3d 687 (D.C. Cir. 2018) .....	8
<i>Allen v. Rodey, Dickason, Sloan, Akin &amp; Robb, P.A.</i> , No. CV 09-3765 PSG (FFMx), 2010 U.S. Dist. LEXIS 147971, at *12-13 (C.D. Cal. Jan. 20, 2010) .....	9
<i>Arthur v. Douglas</i> , No. CV 08-8233 PSG, 2009 U.S. Dist. LEXIS 23105, at *5 (C.D. Cal. Mar. 10, 2009) .....	4
<i>Axiom Foods, Inc. v. Acerchem Int'l, Inc.</i> , 874 F.3d 1064, 1070 (9th Cir. 2017) .....	7
<i>Barone v. Intercontinental Hotels Grp. PLC</i> , No. 15-cv-04990-JCS, 2016 U.S. Dist. LEXIS 66851, at *13 (N.D. Cal. May 20, 2016) .....	4
<i>Castillo v. Caesars Entm't Corp.</i> , No. 18-cv-05781-EMC, 2018 U.S. Dist. LEXIS 201721, at *4 (N.D. Cal. Nov. 28, 2018) .....	6
<i>Christensen v. Barclays Bank Del.</i> , No. 1:18-cv-12280-ADB, 2019 U.S. Dist. LEXIS 72239, at *18 (D. Mass. April 30, 2019) .....	17
<i>Corwin v. Swanson</i> , No. CV 10-769 PSG, 2010 U.S. Dist. LEXIS 153533, at *12 (C.D. Cal. Apr. 27, 2010) .....	10
<i>Daimler AG v. Bauman</i> , 571 U.S. 117, 122 (2014) .....	5
<i>DFSB Kollective Co. Ltd. v. Bourne</i> , 897 F. Supp. 2d 871, 883 (N.D. Cal. 2012) .....	8
<i>Elofson v. Bivens</i> , No. 15-cv-05761-BLF, 2017 U.S. Dist. LEXIS 20218, at *17 (N.D. Cal. Feb. 13, 2017) .....	9
<i>Fontaine v. Wash. Mut. Bank, Inc.</i> , No. CV 08-5659 PSG (Ex), 2009 U.S. Dist. LEXIS 41168, at *11 (C.D. Cal Apr. 30, 2000) .....	15

1	<i>Fox v. Berenis</i> , No. 3:17-cv-2066-SI, 2018 U.S. Dist. LEXIS 203859, at *7 (D. Or. Dec. 3, 2018) .....	5
2	<i>Helicopteros Nacionales de Columbia, S.A. v. Hall</i> , 466 U.S. 408, 414 n.8 (1984) .....	5
3		
4	<i>Kauffman v. CallFire, Inc.</i> , 141 F. Supp. 3d 1044, 1050 (S.D. Cal. 2015) .....	8
5		
6	<i>Kinetics Noise Control, Inc. V. ECORE Int'l, Inc.</i> , No. CV 10-7902 PSG (JEMx).....	6
7		
8	<i>Metz v. U.S. Life Ins. Co.</i> , 674 F. Supp. 2d 1141, 1146 (C.D. Cal. 2009).....	14
9		
10	<i>Monkton Ins. Servs. v. Ritter</i> , 768 F.3d 429, 432 (5th Cir. 2014).....	5
11		
12	<i>Morrill v. Scott Fin. Corp.</i> , 873 F.3d 1136, 1142 (9th Cir. 2017).....	6
13		
14	<i>OOO Brunswick Rail Mgmt. v. Sultanov</i> , No. 5:17-cv-00017-EJD, 2017 U.S. Dist. LEXIS 8374 (N.D. Cal. Jan. 20, 2017).....	8
15		
16	<i>Painter's Dist. Council No. 30 Health &amp; Welfare Fund v. Amgen, Inc.</i> , No. CV 07-3880 PSG (AGRx), 2007 U.S. Dist. LEXIS 85135, at *7 (C.D. Cal. Nov. 13, 2007).....	13
17		
18	<i>Park v. Dole Fresh Vegetables, Inc.</i> , 964 F. Supp. 2d 1088, 1095 (N.D. Cal. 2013) .....	14
19		
20	<i>Pavlovich v. Superior Court</i> , 29 Cal. 4th 262, 269 (2002); <i>see also Arthur</i> , 2009 U.S. Dist. LEXIS 23105, at *6-7.....	6
21		
22	<i>Reyn's Pasta Bella, LLC v. Visa USA, Inc.</i> , 442 F.3d 741, 746 n.6 (9th Cir. 2006).....	3
23		
24	<i>Saleh v. Titan Corp.</i> , 361 F. Supp. 2d 1152, 1157 (S.D. Cal. 2005) .....	14
25		
26	<i>Schwarzenegger v. Fred Martin Motor Co.</i> , 374 F.3d 797, 800-801 (9th Cir. 2004) .....	1, 4
27		
28	<i>Smith v. Facebook, Inc.</i> , 262 F. Supp. 3d 943, 948-52 (N.D. Cal. 2017) .....	8
29		
30	<i>Walden v. Fiore</i> , 571 U.S. 277, 284 (2014) .....	7
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		
41		
42		
43		
44		
45		
46		
47		
48		
49		
50		
51		
52		
53		
54		
55		
56		
57		
58		
59		
60		
61		
62		
63		
64		
65		
66		
67		
68		
69		
70		
71		
72		
73		
74		
75		
76		
77		
78		
79		
80		
81		
82		
83		
84		
85		
86		
87		
88		
89		
90		
91		
92		
93		
94		
95		
96		
97		
98		
99		
100		
101		
102		
103		
104		
105		
106		
107		
108		
109		
110		
111		
112		
113		
114		
115		
116		
117		
118		
119		
120		
121		
122		
123		
124		
125		
126		
127		
128		
129		
130		
131		
132		
133		
134		
135		
136		
137		
138		
139		
140		
141		
142		
143		
144		
145		
146		
147		
148		
149		
150		
151		
152		
153		
154		
155		
156		
157		
158		
159		
160		
161		
162		
163		
164		
165		
166		
167		
168		
169		
170		
171		
172		
173		
174		
175		
176		
177		
178		
179		
180		
181		
182		
183		
184		
185		
186		
187		
188		
189		
190		
191		
192		
193		
194		
195		
196		
197		
198		
199		
200		
201		
202		
203		
204		
205		
206		
207		
208		
209		
210		
211		
212		
213		
214		
215		
216		
217		
218		
219		
220		
221		
222		
223		
224		
225		
226		
227		
228		
229		
230		
231		
232		
233		
234		
235		
236		
237		
238		
239		
240		
241		
242		
243		
244		
245		
246		
247		
248		
249		
250		
251		
252		
253		
254		
255		
256		
257		
258		
259		
260		
261		
262		
263		
264		
265		
266		
267		
268		
269		
270		
271		
272		
273		
274		
275		
276		
277		
278		
279		
280		
281		
282		
283		
284		
285		
286		
287		
288		
289		
290		
291		
292		
293		
294		
295		
296		
297		
298		
299		
300		
301		
302		
303		
304		
305		
306		
307		
308		
309		
310		
311		
312		
313		
314		
315		
316		
317		
318		
319		
320		
321		
322		
323		
324		
325		
326		
327		
328		
329		
330		
331		
332		
333		
334		
335		
336		
337		
338		
339		
340		
341		
342		
343		
344		
345		
346		
347		
348		
349		
350		
351		
352		
353		
354		
355		
356		
357		
358		
359		
360		
361		
362		
363		
364		
365		
366		
367		
368		
369		
370		
371		
372		
373		
374		
375		
376		
377		
378		
379		
380		
381		
382		
383		
384		
385		
386		
387		
388		
389		
390		
391		
392		
393		
394		
395		
396		
397		
398		
399		
400		
401		
402		
403		
404		
405		
406		
407		
408		
409		
410		
411		
412		
413		
414		
415		
416		
417		
418		
419		
420		
421		
422		
423		
424		
425		
426		
427		
428		
429		
430		
431		
432		
433		
434		
435		
436		
437		
438		
439		
440		
441		
442		
443		
444		
445		
446		
447		
448		
449		
450		
451		
452		
453		
454		
455		
456		
457		
458		
459		
460		
461		
462		
463		
464		
465		
466		
467		
468		
469		
470		
471		
472		
473		
474		
475		
476		
477		
478		
479		
480		
481		
482		
483		
484		
485		
486		
487		
488		
489		
490		
491		
492		
493		
494		
495		
496		
497		
498		

1	28 U.S.C. § 1391(c).....	11
2	Code Cal. Civ. Proc. § 410.10.....	4
3	Fed. R. Civ. P. 4(k)(1)(A) .....	4
4	Fed. R. Civ. Proc. 12(f) .....	17
5	Fed. R. Civ. Proc. 12(f)(2) .....	16
6	Federal Rule of Civil Procedure 12(b)(2) .....	4
7		

8 **OTHER AUTHORITIES**

9	Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 30	30
10	FCC Rcd. 7961, 7982 ¶ 33 (2015) .....	8
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## MEMORANDUM OF POINTS AND AUTHORITIES

2 This case does not belong in California. Plaintiff, who is a resident of Texas,  
3 has brought in this Court a putative class action under the TCPA for text messages  
4 allegedly sent by Defendant, a Delaware corporation headquartered in New Jersey.  
5 Plaintiff should not be permitted to proceed with his putative class claims in this  
6 Court for four reasons. First, Defendant is not subject to personal jurisdiction in  
7 California in connection with this lawsuit. Second, this District is an improper  
8 venue for Plaintiff's claims. Third, even if personal jurisdiction did exist and venue  
9 were proper, this action is better suited for adjudication in another forum. Finally,  
10 should the suit remain in this Court, Plaintiff cannot pursue his claims on a class  
11 basis. Plaintiff should be compelled to litigate this matter in a proper forum, and/or  
12 should be prohibited from asserting class claims.

## FACTUAL BACKGROUND

14 Defendant provides computerized preparation of federal, state and local  
15 individual income tax returns in the United States through a nationwide network of  
16 franchised and company-owned offices. Declaration of Amori Langstaff  
17 (“Langstaff Decl.”), at ¶ 2.<sup>1</sup> Jackson Hewitt is a Delaware corporation that  
18 maintains its principal place of business in Jersey City, New Jersey. Compl., ¶ 6.  
19 There are close to 6,000 Jackson Hewitt franchised and company-owned locations  
20 nationwide. Langstaff Decl., at ¶ 2. Approximately 292 of those offices (about 5%)  
21 are located in California. Langstaff Decl., at ¶ 2.

22 Plaintiff is a citizen of Texas who resides in Williamson County, Texas.  
23 Compl., ¶ 5. Plaintiff's parents engaged Jackson Hewitt franchisees to prepare their  
24 tax returns for several years, beginning in 2009. See Langstaff Decl., at ¶¶ 3-4;

1 Declaration of Margaret Schuchardt (“Schuchardt Decl.”), at ¶ 4. From tax year  
 2 2016 forward, Reta Hancock (Plaintiff’s mother) continued to do business with  
 3 Jackson Hewitt franchisees. Langstaff Decl., at ¶ 4; Schuchardt Decl., at ¶ 4. Most  
 4 pertinently, Ms. Hancock and Plaintiff (her son) in 2018 engaged a Jackson Hewitt  
 5 franchisee to file Ms. Hancock’s taxes for tax year 2017 at a location in Cedar Park,  
 6 Texas. Langstaff Decl., at ¶ 3; Schuchardt Decl., at ¶ 4. In connection with this and  
 7 other returns, Plaintiff and his mother provided Jackson Hewitt with a particular  
 8 telephone number, and executed documents authorizing Jackson Hewitt to send  
 9 promotional text messages to that number and also waiving any right to resolve  
 10 disputes against Defendant on a class basis. Langstaff Decl., at Ex. 1 and Ex. 2.<sup>2</sup>

11 Plaintiff has now filed suit in this Court, alleging that he received unsolicited  
 12 text messages “urging him to have Defendant . . . do his taxes,” and on this basis  
 13 asserts individual and putative class claims against Defendant for violations of the  
 14 TCPA. *See* Compl., ¶¶ 2-4. The phone number at which Plaintiff received text  
 15 messages was the same number Plaintiff and his mother provided to Jackson Hewitt  
 16 in the course of Jackson Hewitt’s tax preparation services. *See* Langstaff Decl., at  
 17 Exs. 1-2; Schuchardt Decl., at ¶ 4. The March 27, 2019 text message referenced in  
 18 Plaintiff’s Complaint was sent by a Jackson Hewitt franchisee headquartered in  
 19 Georgetown, TX. Langstaff Decl., at ¶ 7.

20 Plaintiff alleges that venue is proper in this forum because non-party CallFire,  
 21 Inc. d/b/a EZ Texting (“CallFire”) is “headquartered in this District” and Defendant  
 22 “hired CallFire to send the texts that are the subject of this case,” and therefore “a  
 23 substantial part of the events and omissions giving rise to Plaintiff’s claims occurred

25 \_\_\_\_\_  
 26 <sup>2</sup> Defendant is filing contemporaneously with this motion an application for leave to  
 27 file under seal the tax return documents attached as Exhibits 1 and 2 to the Langstaff  
 Declaration.

1 in this District.” Compl., ¶¶ 7, 10.

2 CallFire is a telecommunications platform that allows users to develop and  
 3 send messages to recipients of their choosing. *Kauffman v. CallFire, Inc., et al.*, No.  
 4 14-CV-1333-H-DHB (S.D. Cal.), Dkt. 38-2, p. 2 of 11.<sup>3</sup> CallFire is a common  
 5 carrier registered with the FCC, and CallFire does not control the content,  
 6 destination or timing of its users’ communications. *Id.* Instead, CallFire acts as a  
 7 passive conduit between its customers and other telecommunications carriers that  
 8 deliver the messages to the ultimate recipients. *Id.* at pp. 2-3 of 11. Put simply,  
 9 CallFire is an application that transmits user-created and user-directed text messages  
 10 to the user’s telephony provider, which in turn transmits those messages to the  
 11 providers of the intended recipients, which in turn transmits the messages to the  
 12 recipients. *Id.* at p. 2 of 11; Langstaff Decl., at ¶¶ 5-6. Defendant and its  
 13 franchisees utilize the CallFire platform to send text messages to their customers.  
 14 Langstaff Decl., at ¶ 5.

15 **ARGUMENT**

16 Plaintiff’s putative class claims are not properly asserted in this Court.  
 17 Continued prosecution of this litigation in the Central District of California would  
 18 not comport with due process or statutory venue requirements, and would result in  
 19 substantial inconvenience to Defendant and the majority of the witnesses with  
 20 information relevant to Plaintiff’s claims. Moreover, Plaintiff is prohibited from  
 21 pursuing class claims in this or any Court. For all of these reasons, Plaintiff cannot  
 22 proceed with his claims as pled in this forum.

23

24

25

---

26 <sup>3</sup> The Court may take judicial notice of the filings made by CallFire in the *Kauffman*  
 27 litigation. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6  
 28 (9th Cir. 2006) (The court “may take judicial notice of court filings and other  
 matters of public record.”).

1

2 **I. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED FOR LACK**

3 **OF PERSONAL JURISDICTION**

4 Plaintiff's claims relating to a text message he received in Texas does not  
 5 subject Defendant to personal jurisdiction in this Court. Defendant is not  
 6 headquartered or incorporated in California, and Plaintiff's claims have no  
 7 connection to California. Accordingly, Plaintiff's claims should be dismissed for  
 8 want of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

9 **A. Legal Standard**

10 Where a defendant moves to dismiss a complaint for lack of personal  
 11 jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is  
 12 appropriate. *See Barone v. Intercontinental Hotels Grp. PLC*, No. 15-cv-04990-  
 13 JCS, 2016 U.S. Dist. LEXIS 66851, at \*13 (N.D. Cal. May 20, 2016). Fed. R. Civ.  
 14 P. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a  
 15 defendant "who is subject to the jurisdiction of a court of general jurisdiction in the  
 16 state where the district court is located."). California's long-arm statute permits the  
 17 exercise of personal jurisdiction so long as it comports with federal due process.  
 18 *See* Code Cal. Civ. Proc. § 410.10; *Schwarzenegger v. Fred Martin Motor Co.*, 374  
 19 F.3d 797, 800-801 (9th Cir. 2004). Accordingly, a jurisdictional analysis under  
 20 California law is coextensive with federal due process analysis.

21 "For a court to exercise personal jurisdiction over a nonresident defendant,  
 22 that defendant must have at least 'minimum contacts' with the relevant forum such  
 23 that the exercise of jurisdiction 'does not offend traditional notions of fair play and  
 24 substantial justice.'" *Schwarzenegger*, 374 F.3d at 801 (quoting *Int'l Shoe Co. v.*  
 25 *Washington*, 326 U.S. 310, 316 (1945)). Under the minimum contacts test,  
 26 jurisdiction can either be "specific" or "general." *Arthur v. Douglas*, No. CV 08-  
 27 8233 PSG, 2009 U.S. Dist. LEXIS 23105, at \*5 (C.D. Cal. Mar. 10, 2009)  
 28 (Gutierrez, J.) (citation omitted).

1 General jurisdiction allows “a defendant to be haled into court in the forum  
 2 state to answer for any of its activities anywhere in the world.” *Schwarzenegger*,  
 3 374 F.3d at 801. For corporations, general jurisdiction is appropriate only when the  
 4 corporation’s contacts with the forum state “are so constant and pervasive as to  
 5 render it essentially at home” in the state. *Daimler AG v. Bauman*, 571 U.S. 117,  
 6 122 (2014) (citation omitted). By contrast, “specific jurisdiction” exists when a case  
 7 “aris[es] out of or relate[s] to the defendant’s contacts with the forum.”  
 8 *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984);  
 9 *see also Daimler*, 571 U.S. at 128.

10 **B. There Is No General Personal Jurisdiction Over Jackson Hewitt.**

11 Defendant can only be subject to the general jurisdiction of this Court if it is  
 12 “at home” in California. Ordinarily, for general jurisdiction purposes, a corporation  
 13 will be deemed ‘at home’ and hence ‘domiciled’ only where it has its principal place  
 14 of business or where it is incorporated. *Daimler*, 571 U.S. at 137. Only in an  
 15 “exceptional case” will general jurisdiction be available anywhere else. *Daimler*,  
 16 571 U.S. at 139 n.19. It is, therefore, “incredibly difficult” to establish general  
 17 jurisdiction in a forum anywhere other than the place of incorporation or principal  
 18 place of business. *Monkton Ins. Servs. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014).

19 There is no basis for the exercise of general jurisdiction here. Defendant is  
 20 incorporated in the state of Delaware, and has its principal place of business in New  
 21 Jersey. While Defendant conducts business nationwide, and a modicum of that  
 22 business occurs in California, those are not “exceptional circumstances” that justify  
 23 deviation from the general rule that Defendant is only subject to general jurisdiction  
 24 in Delaware and New Jersey. *See Daimler*, 564 U.S. at 140 n.20 (“A corporation  
 25 that operates in many places can scarcely be deemed at home in all of them.”); *see*  
 26 *also Fox v. Berenis*, No. 3:17-cv-2066-SI, 2018 U.S. Dist. LEXIS 203859, at \*7 (D.  
 27 Or. Dec. 3, 2018) (existence of franchisees in forum state did not “support  
 28 exercising general jurisdiction in a forum other than [Defendant’s] state of

1 incorporation or principal place of business.”).

2 **C. There Is No Specific Personal Jurisdiction Over Defendant.**

3 Nor is Defendant subject to specific jurisdiction in this Court as a result of  
 4 this suit. In determining whether specific jurisdiction exists, courts consider the  
 5 “relationship among the defendant, the forum, and the litigation.” *Helicopteros*  
 6 *Nacionales de Colombia*, 466 U.S. at 414 (citation omitted). Here, there is no nexus  
 7 between Defendant, this Court, and the instant litigation.

8 In California, a court may exercise specific jurisdiction over a nonresident  
 9 defendant only if: (1) the defendant has purposefully availed [itself] of forum  
 10 benefits; (2) the controversy is related to or arises out of the defendant’s contacts  
 11 with the forum; and (3) the assertion of personal jurisdiction would comport with  
 12 ‘fair play and substantial justice,’ *i.e.*, it must be reasonable. *See Pavlovich v.*  
 13 *Superior Court*, 29 Cal. 4th 262, 269 (2002); *see also Arthur*, 2009 U.S. Dist.  
 14 LEXIS 23105, at \*6-7. None of these elements is present here.

15 **1. Defendant Did Not Purposefully Direct The Alleged Activities  
 16 At California.**

17 To begin with, there is nothing to suggest that Defendant (or anyone else)  
 18 purposefully directed the conduct at issue toward this forum.<sup>4</sup> “Purposeful direction  
 19 ‘requires that the defendant . . . have (1) committed an intentional act, (2) expressly

---

20

21 <sup>4</sup> Under the first prong of the specific jurisdiction analysis, courts in this Circuit  
 22 apply a “purposeful direction” test for claims sounding in tort and a “purposeful  
 23 availment” test for contract claims. *See Morrill v. Scott Fin. Corp.*, 873 F.3d 1136,  
 24 1142 (9th Cir. 2017); *see also Kinetics Noise Control, Inc. V. ECORE Int’l, Inc.*, No.  
 25 CV 10-7902 PSG (JEMx), 2011 U.S. Dist. LEXIS 164284, at \*6 (C.D. Cal. Jan. 12,  
 26 2011) (Gutierrez, J.). For purposes of this aspect of the jurisdictional analysis,  
 27 TCPA claims sound in tort and thus the purposeful direction test applies. *See*  
 28 *Castillo v. Caesars Entm’t Corp.*, No. 18-cv-05781-EMC, 2018 U.S. Dist. LEXIS  
 201721, at \*4 (N.D. Cal. Nov. 28, 2018) (“The instant case, which involves an  
 alleged TCPA violation, is based on a tort, not a contract, and thus the purposeful  
 direction [test] should apply.”).

1 aimed at the forum state, (3) causing harm that the defendant knows is likely to be  
 2 suffered in the forum state.”” *Morrill*, 873 F.3d at 1142 (quoting *Schwarzenegger*,  
 3 374 F.3d at 803). Plaintiff’s allegations here fail at least the second and third  
 4 requirements.

5 Plaintiff cannot show that Defendant expressly aimed any relevant conduct at  
 6 California when the Defendant is located in New Jersey, and the text message that  
 7 forms the basis of Plaintiff’s claims was sent by an entity in Texas to an individual  
 8 in Texas. Plaintiff’s only basis for bringing this suit in California is that non-party  
 9 CallFire, whose text messaging software platform was utilized by Jackson Hewitt  
 10 and its franchisees, is headquartered in this District.<sup>5</sup> But Plaintiff’s allegations as to  
 11 CallFire’s role in the transmission of the texts at issue are inaccurate, and in any  
 12 event do not support the assertion of personal jurisdiction over Jackson Hewitt in  
 13 this case.

14 At the outset, CallFire is a third party, and so its connection to California  
 15 cannot drive the specific jurisdiction analysis. *See Walden v. Fiore*, 571 U.S. 277,  
 16 284 (2014) (“We have consistently rejected attempts to satisfy the defendant-  
 17 focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff  
 18 (*or third parties*) and the forum State.”) (emphasis added); *Axiom Foods, Inc. v.*  
 19 *Acerchem Int’l, Inc.*, 874 F.3d 1064, 1070 (9th Cir. 2017) (“As required, we focus  
 20 on the defendant’s contacts with the forum State itself, not the defendant’s contacts  
 21 with persons who reside there.”) (citation omitted).

22 Moreover, CallFire is a communication platform utilized by Defendant, which  
 23

---

24  
 25  
 26  
 27  
 28<sup>5</sup> Plaintiff’s Complaint alleges that “CallFire’s computers stored the numbers  
 Jackson Hewitt provided, and automatically sent the texts – *i.e.*, made the calls that  
 are the subject of this case – according to Jackson Hewitt’s instructions,” and that  
 “CallFire’s computers generated a sequence for sending the texts, based upon the  
 demographic and other information Jackson Hewitt provided, and then  
 automatically dialed those numbers.” Compl., ¶¶ 26-27.

1 serves as a gateway between Defendant and its franchisees, their respective  
 2 telephone carriers, and the carriers of the various recipients of the transmitted texts.  
 3 Langstaff Decl., at ¶ 6. Plaintiff himself must not believe that CallFire is the  
 4 “maker” or “initiator” of text messages within the meaning of the TCPA, as he  
 5 declined to name CallFire as a defendant in this case. *See Kauffman v. CallFire, Inc.*,  
 6 141 F. Supp. 3d 1044, 1050 (S.D. Cal. 2015) (“the Court concludes that  
 7 Defendant CallFire is a carrier that did not initiate the messages Plaintiff  
 8 received.”); *see also* Rules and Regulations Implementing the Telephone Consumer  
 9 Protection Act of 1991, 30 FCC Rcd. 7961, 7982 ¶ 33 (2015), *aff’d in part and*  
 10 *rev’d in part on other grounds by ACA Int’l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018)  
 11 (finding that a text messaging app “is not the maker or initiator of the text” where “it  
 12 does not control the recipients, timing, or content, but instead merely has some role,  
 13 however minor, in the causal chain that results in the making of a telephone call”).

14 For this reason, a number of courts in the Ninth Circuit have held that out-of-  
 15 state defendants (like Defendant) that engage, use, or embed platforms and  
 16 technologies from California-based companies (like CallFire) are not subject to  
 17 specific jurisdiction in California based on that connection. *See, e.g., Castillo*, 2018  
 18 U.S. Dist. LEXIS 201721 (use of in-state text messaging platform insufficient to  
 19 confer personal jurisdiction over out-of-state defendant); *Smith v. Facebook, Inc.*,  
 20 262 F. Supp. 3d 943, 948-52 (N.D. Cal. 2017) (declining to exercise jurisdiction  
 21 over out-of-state website operators using embedded codes from Facebook to track  
 22 patrons’ browsing histories even though Facebook was based in California); *OOO*  
 23 *Brunswick Rail Mgmt. v. Sultanov*, No. 5:17-cv-00017-EJD, 2017 U.S. Dist. LEXIS  
 24 8374 (N.D. Cal. Jan. 20, 2017) (declining to exercise jurisdiction over Gmail users  
 25 based solely on use of Google’s product); *DFSB Kollective Co. Ltd. v. Bourne*, 897  
 26 F. Supp. 2d 871, 883 (N.D. Cal. 2012) (holding that the defendant did not  
 27 purposefully direct activities at California by “utiliz[ing] accounts on California-  
 28 headquartered Internet companies Facebook, hi5.com, DeviantArt, and 4Shared to

1 direct traffic to his Websites”), *adopted by* 897 F. Supp. 2d 871 (N.D. Cal. Sept. 13,  
 2 2012). There is no reason to conclude otherwise here.

3 Finally, because any alleged harm to Plaintiff would have occurred in Texas,  
 4 Plaintiff cannot establish that Defendant “caus[ed] harm that the defendant knows  
 5 is likely to be suffered in [California],” the third element of the purposeful direction  
 6 test. *Morrill*, 873 F.3d at 1142 (quoting *Schwarzenegger*, 374 F.3d at 803).  
 7 Accordingly, just as the allegations in the Complaint indicate that the conduct at  
 8 issue could only have been aimed at Texas, those allegations also indicate that any  
 9 alleged harm occurred—and could only reasonably be expected to have occurred—  
 10 in Texas.

11 **2. Plaintiff’s TCPA Claim Does Not Arise Out Of Or Relate To  
 12 Any California-Related Activities.**

13 To satisfy the second prong of the personal jurisdiction analysis, a plaintiff must  
 14 show that the “the controversy is related to or arises out of the defendant’s contacts  
 15 with the forum.” *Pavlovich*, 29 Cal. 4th at 269. To evaluate this factor of the  
 16 analysis, courts employ a “but for” test pursuant to which “a lawsuit arises out of a  
 17 defendant’s contacts with the forum state if a direct nexus exists between those  
 18 contacts and the cause of action.” *Elofson v. Bivens*, No. 15-cv-05761-BLF, 2017  
 19 U.S. Dist. LEXIS 20218, at \*17 (N.D. Cal. Feb. 13, 2017) (citation omitted); *accord*  
 20 *Allen v. Rodey, Dickason, Sloan, Akin & Robb, P.A.*, No. CV 09-3765 PSG (FFMx),  
 21 2010 U.S. Dist. LEXIS 147971, at \*12-13 (C.D. Cal. Jan. 20, 2010) (Gutierrez, J.).  
 22 “That is, a plaintiff must show that ‘but for’ the defendant’s forum related conduct,  
 23 the injury would not have occurred.” *Abedi v. New Age Med. Clinic PA*, No. 1:17-  
 24 CV-1618 AWI SKO, 2018 U.S. Dist. LEXIS 105932, at \*6 (E.D. Cal. June 25,  
 25 2018) (citation omitted). As set forth above, Defendant engaged in no forum-related  
 26 conduct relative to this action, and thus there is no such conduct that could have  
 27 been the “but for” cause of Plaintiff’s claimed injury.

28

### **3. The Exercise Of Jurisdiction Over Defendant In This Case Would Be Unreasonable.**

Because Plaintiff has failed to satisfy the second prong of the specific jurisdiction inquiry, no further analysis is needed. *See Schwarzenegger*, 374 F.3d at 802 (“If the plaintiff fails to satisfy either of these [first two] prongs, personal jurisdiction is not established in the forum state.”). But even if Plaintiff could meet his “burden of satisfying the first two prongs,” and this Court were to reach the third prong, this Court nevertheless should grant Defendant’s motion because exercising personal jurisdiction over Defendant in this matter would be unreasonable. *Id.*

Courts consider the following seven factors in determining whether the exercise of jurisdiction over a defendant is reasonable: (1) the extent of the defendant's purposeful interjection into the forum state, (2) the burden on the defendant in defending in the forum, (3) the extent of the conflict with the sovereignty of the defendant's state, (4) the forum state's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum. *See Corwin v. Swanson*, No. CV 10-769 PSG, 2010 U.S. Dist. LEXIS 153533, at \*12 (C.D. Cal. Apr. 27, 2010) (Gutierrez, J.). On balance, these factors weigh strongly against asserting jurisdiction here.

21 In particular, as explained in detail above, this case involves no “purposeful  
22 interjection” by Defendant into California. Defendant’s business, evidence, and  
23 witnesses are in New Jersey, not California, as Defendant is principally located in  
24 New Jersey. Moreover, the text message at issue was sent by a Texas entity, and  
25 receipt of the text message at issue occurred in Texas; accordingly, California has no  
26 particular interest in adjudicating this dispute because it does not involve any claims  
27 under California law—only a federal claim brought under the TCPA. Additionally,  
28 alternative fora exist in New Jersey and Texas (as discussed below), and litigating in

1 a federal court in New Jersey or Texas will have no negative effect on Plaintiff's  
 2 interest in convenient and effective relief. All of the relevant factors indicate that  
 3 exercising jurisdiction over Defendant in this case would be unreasonable.

4 **II. VENUE IS IMPROPER IN THIS DISTRICT**

5 For largely the same reasons as set forth above, the Court should dismiss this  
 6 case for lack of venue in this District. The federal venue statute, 28 U.S.C. §  
 7 1391(b), provides:

8       Venue in General. – A civil action may be brought in – (1) a judicial  
 9 district in which any defendant resides, if all defendants are residents  
 10 of the State in which the district is located; (2) a judicial district in  
 11 which a substantial part of the events or omissions giving rise to the  
 12 claim occurred, or a substantial part of property that is the subject of  
 13 the action is situated; or (3) if there is no other district in which an action  
 14 may otherwise be brought as provided in this section, any judicial  
 15 district in which any defendant is subject to the court's personal  
 16 jurisdiction with respect to such action.

17 28 U.S.C. § 1391(b). Here, none of the three venue requirements are satisfied.

18       First, venue is not proper in this District because Defendant does not reside  
 19 herein. For venue purposes, an entity “shall be deemed to reside, if a defendant, in  
 20 any judicial district in which such defendant is subject to the court's personal  
 21 jurisdiction with respect to the civil action in question.” 28 U.S.C. § 1391(c). For  
 22 the reasons discussed above, this lawsuit does not subject Defendant to personal  
 23 jurisdiction in California. As a result, venue is also improper in any federal court in  
 24 the state.

25       Second, venue is not proper in this District pursuant to § 1391(b)(2) because a  
 26 substantial part of the events and omissions giving rise to Plaintiff's claims did not  
 27 occur here. As noted above, this case arises from a text received by a Texas  
 28 resident, from a Texas entity, which maintains a franchisee relationship with a  
 corporate entity residing in New Jersey. There is no affiliation between the District  
 and the events underlying this case.

1           Third, venue is not proper in this District under § 1391(b)(3) because there  
 2 are other districts in which Plaintiff could bring this action. Plaintiff is a Texas  
 3 resident who did business with a Jackson Hewitt franchisee in Texas that sent the  
 4 text message at issue (from Texas). Defendant is incorporated in Delaware and has  
 5 its principal place of business in New Jersey. At a minimum, Plaintiff could have  
 6 filed this action in New Jersey, where Defendant acknowledges it is subject to  
 7 jurisdiction, or in Texas, where he conducted business with Defendant's franchisee.  
 8 Without a basis for venue in this Court, Plaintiff's Complaint should be dismissed.

9           **III. IN THE EVENT VENUE IS PROPER HERE, THE CASE SHOULD  
 10           NEVERTHELESS BE TRANSFERRED**

11           Should the Court find that, in this case, the exercise of personal jurisdiction  
 12 over Defendant is appropriate and that venue is proper, this action should  
 13 nevertheless be transferred to either the District of New Jersey or the Western  
 14 District of Texas pursuant to 28 U.S.C. 1404(a). The federal change-of-venue  
 15 statute permits transfer where: (1) the receiving district is "a district or division  
 16 where [the action] might have been brought," and (2) the transfer is for "the  
 17 convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. §  
 18 1404(a). Both requirements are met here.

19           **A. Plaintiff Could Have Filed In The District Of New Jersey Or The  
 20           Western District Of Texas.**

21           The first requirement for transfer is met because both proper venue and  
 22 personal jurisdiction exist in the United States District Court for the District of New  
 23 Jersey and the Western District of Texas. Venue is proper in a judicial district in  
 24 which any defendant resides, 28 U.S.C. § 1391(b), and/or "a judicial district in  
 25 which a substantial part of the events or omissions giving rise to the claim occurred,  
 26 or a substantial part of property that is the subject of the action is situated."  
 27 Defendant maintains its principal place of business in Jersey City, New Jersey, and  
 28 Defendant is subject to personal jurisdiction in New Jersey; moreover, Plaintiff

1 resides in the Western District of Texas and the text at issue was sent by an entity in  
 2 the Western District of Texas. Accordingly, Plaintiff could have filed this action in  
 3 the Western District of Texas or the District of New Jersey. *Daimler*, 571 U.S. at  
 4 137.

5 **B. Transfer Serves The Convenience Of The Parties And The Witnesses  
 6 And The Interest Of Justice.**

7 Prosecution of this case in New Jersey or Texas would also promote the  
 8 interests of convenience and justice. In evaluating this requirement of Section  
 9 1404(a), courts consider: (1) the location where the relevant agreements were  
 10 negotiated and executed, (2) the state that is most familiar with the governing law,  
 11 (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the  
 12 forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum,  
 13 (6) the differences in the costs of litigation in the two forums, (7) the availability of  
 14 compulsory process to compel attendance of unwilling non-party witnesses, and (8)  
 15 the ease of access to sources of proof. *See Painter's Dist. Council No. 30 Health &*  
 16 *Welfare Fund v. Amgen, Inc.*, No. CV 07-3880 PSG (AGRx), 2007 U.S. Dist.  
 17 LEXIS 85135, at \*7 (C.D. Cal. Nov. 13, 2007) (Gutierrez, J.) (citation omitted).  
 18 Application of those factors to the facts here supports transferring this case to New  
 19 Jersey or Texas.

20 To begin with, the Central District of California is not convenient for either of  
 21 the parties because neither Plaintiff nor Defendant resides here. Plaintiff alleges that  
 22 he is a resident of Williamson County, Texas, and Defendant resides in Delaware  
 23 and New Jersey. Moreover, litigation costs would be reduced for both parties if this  
 24 case were litigated in New Jersey or Texas, as the evidence and witnesses relating to  
 25 Defendant's business practices are largely situated in New Jersey (where Defendant  
 26 is headquartered), and the evidence and witnesses relating to Plaintiff's TCPA claim  
 27 are located in Texas (where Plaintiff resides and transacted business with  
 28 Defendant's franchisee, and where the text message at issue was both sent and

1 received). *See Park v. Dole Fresh Vegetables, Inc.*, 964 F. Supp. 2d 1088, 1095  
 2 (N.D. Cal. 2013) (“Generally, litigation costs are reduced when venue is located  
 3 near the most witnesses expected to testify, and [t]he convenience of witnesses is  
 4 often the most important factor in resolving a motion to transfer.”) (citation  
 5 omitted). Further, considering “the respective parties’ contacts with the forum” and  
 6 “the contacts relating to the plaintiff’s cause of action in the chosen forum,” *Park*,  
 7 964 F. Supp. 2d at 1093, transfer is proper, as Defendant has no relevant contacts  
 8 with the current venue and, again, Plaintiff does not reside within the Central  
 9 District of California, so he too lacks a substantial contact to the venue.

10 Additionally, Plaintiff’s choice of forum in this case deserves little to no  
 11 weight. “[T]he Ninth Circuit, like other courts, has noted that the weight to be given  
 12 the plaintiff’s choice of forum is discounted where the action is a class action.”  
 13 *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1157 (S.D. Cal. 2005) (“[W]hen an  
 14 individual brings a derivative suit or represents a class, the named plaintiff’s choice  
 15 of forum is given less weight.”) (quoting *Lou v. Belzberg*, 834 F.2d 730, 739 (9th  
 16 Cir. 1987)). “Deference to the plaintiff’s choice of venue is further diminished if the  
 17 moving party establishes one or more of the following factors: (1) the operative  
 18 facts have not occurred within the forum; (2) the forum has no particular interest in  
 19 the parties or subject matter; (3) the forum is not the primary residence of either the  
 20 plaintiff or defendant; or (4) the subject matter of the litigation is not substantially  
 21 connected to the forum.” *Metz v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1146  
 22 (C.D. Cal. 2009) (citation omitted); *see also Park*, 964 F. Supp. 2d at 1094 (“[T]he  
 23 degree of deference is substantially diminished in several circumstances, including  
 24 where: (1) the plaintiff’s venue choice is not its residence; (2) the conduct giving  
 25 rise to the claims occurred in a different forum; (3) the plaintiff sues on behalf of a  
 26 putative class; or (4) plaintiff’s choice of forum was plaintiff’s second choice.”)  
 27 (internal citations and quotations omitted). Here, “the operative facts have not  
 28 occurred within the forum,” and “the subject matter of the litigation is not

1 substantially connected to the forum," *Metz*, 674 F. Supp. 2d at 1146, *see also Park*,  
 2 964 F. Supp. 2d at 1094, because the sending and receipt of the text message at issue  
 3 occurred outside of California, and "the forum is not the primary residence of either  
 4 the plaintiff or defendant." *Metz*, 674 F. Supp. 2d at 1146; *Park*, 964 F. Supp. 2d at  
 5 1094.

6 The remaining factors do not weigh against transfer. To the extent there are  
 7 any agreements between the parties, those agreements would have been executed in  
 8 Texas, not California. And since Plaintiff's claims arise under federal law, there is  
 9 no "state that is most familiar with the governing law." *See Fontaine v. Wash. Mut.*  
 10 *Bank, Inc.*, No. CV 08-5659 PSG (Ex), 2009 U.S. Dist. LEXIS 41168, at \*11 (C.D.  
 11 Cal Apr. 30, 2000) (Gutierrez, J.) (" . . . where, as here, Plaintiff's claims for relief  
 12 are based on federal law, both courts are presumably equally familiar with the  
 13 governing law."). Finally, the only potential non-party witness identified by  
 14 Plaintiff to date is CallFire, which, as set forth above, is a technology provider with  
 15 no substantial connection to this case. *See Castillo*, 2018 U.S. Dist. LEXIS 201721,  
 16 at \*16 ("while GoMoment may well be a witness in the instant case, it does not  
 17 appear to be a crucial witness because, as alleged in the complaint, it simply  
 18 provided a platform for [defendant] to use and nothing more. The critical witnesses  
 19 will be [defendant's] employees — *e.g.*, those who made the decision to send the  
 20 text messages.").

21 Accordingly, if this Court is not inclined to dismiss the Complaint on personal  
 22 jurisdiction grounds, it should find that venue is more appropriate in the District of  
 23 New Jersey or the Western District of Texas than in the Central District of  
 24 California and transfer this case accordingly.

25 **IV. PLAINTIFF'S CLASS ALLEGATIONS SHOULD BE STRICKEN**  
 26 **BECAUSE PLAINTIFF SIGNED A VALID CLASS-ACTION**  
 27 **WAIVER**

28 Finally, should this case remain in this Court, Plaintiff's class claims should

1 be stricken, as Plaintiff signed an agreement waiving any right to assert claims  
 2 against Jackson Hewitt on a class basis.<sup>6</sup> Langstaff Decl., at Ex. 1. Specifically, the  
 3 contract that Plaintiff signed with Jackson Hewitt provides:

4 **WAIVER OF JURY TRIAL AND PARTICIPATION IN CLASS**  
 5 **ACTION.** WITH RESPECT TO ANY CLAIMS FOR MONEY  
 6 DAMAGES AND/OR EQUITABLE OR INJUNCTIVE RELIEF,  
 7 INCLUDING, BUT NOT LIMITED TO, ALL COUNTERCLAIM,  
 8 CROSS-CLAIMS AND THIRD-PARTY CLAIMS THAT YOU MAY  
 9 BRING AGAINST JACKSON HEWITT TAX SERVICE INC., AND  
 10 ITS SUBSIDIARIES AND AFFILIATES, AND INDEPENDENTLY  
 11 OWNED AND OPERATED THIRD-PARTY FRANCHISEES AND  
 12 TAX PREPARERS OF ANY OF THEM, AND ANY FORMER,  
 13 PRESENT AND FUTURE PARENT, SUBSIDIARY AND  
 14 AFFILIATED CORPORATIONS, AND THE SUCCESSORS AND  
 15 ASSIGNS OF ANY OF THEM, AND THEIR FORMER PRESENT  
 16 AND FUTURE OFFICERS, DIRECTORS, AGENTS,  
 17 SHAREHOLDERS, EMPLOYEES, AND REPRESENTATIVES  
 18 (THE “JACKSON HEWITT SYSTEM”). YOU ARE GIVING UP  
 19 YOUR RIGHT: (A) TO HAVE A TRIAL BY JURY TO RESOLVE  
 ANY DISPUTE ALLEGED AGAINST THE JACKSON HEWITT  
 SYSTEM; AND (B) YOU ARE GIVING UP YOUR RIGHT TO  
 SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY  
 GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY,  
 AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF  
 CLAIMANTS, IN ANY LAWSUIT FILED AGAINST THE  
 JACKSON HEWITT SYSTEM.

20 **BY SIGNING BELOW, YOU AGREE TO THE TERMS OF THIS**  
 21 **AGREEMENT, WHICH INCLUDES A WAIVER OF JURY**  
 22 **TRIAL AND A WAIVER OF PARTICIPATION IN A CLASS**  
 23 **ACTION, WHICH MAY SUBSTANTIALLY LIMIT YOUR**  
 24 **RIGHTS IN THE EVENT OF A DISPUTE. YOU ALSO**  
 25 **ACKNOWLEDGE RECEIVING A COMPLETED COPY OF**  
 26 **THIS TAXPAYER INFORMATION FORM AND**  
 27 **AGREEMENT.**

28  
 6 As Rule 12(f) provides that motions to strike must be brought in a pre-answer  
 motion (see Fed. R. Civ. Proc. 12(f)(2)), Defendant has included this request for  
 relief as part of this motion to preclude any argument that it has been waived.

1  
2 Langstaff Decl., at Ex. 1. In accordance with this agreement, Plaintiff should be  
3 prohibited from asserting his class claims here.

4 Rule 12(f) provides that “[t]he court may strike from a pleading an  
5 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter  
6 . . . on motion made by a party . . . before responding to the pleading . . . ” Fed. R.  
7 Civ. Proc. 12(f). Under this Rule, courts have stricken class allegations from a  
8 complaint where, as here, a plaintiff signed a class-action waiver, barring the  
9 plaintiff from bringing his or her action on behalf of a class. *See Christensen v.*  
10 *Barclays Bank Del.*, No. 1:18-cv-12280-ADB, 2019 U.S. Dist. LEXIS 72239, at  
11 \*17-18 (D. Mass. April 30, 2019). This Court should similarly strike the class  
12 allegations from Plaintiff’s Complaint.

13 **CONCLUSION**

14 Plaintiff’s claims, which arise from a text message sent by a Texas franchisee  
15 of Defendant, which is located in New Jersey, to Plaintiff in Texas, bear no  
16 connection to California. As a result, Defendant is not subject to the Court’s  
17 jurisdiction in this action, venue is not properly laid in any court in this state, and  
18 Plaintiff’s Complaint should be dismissed. Alternatively, this case should be  
19 transferred to a venue more substantially connected to the claims at issue that is  
20 more convenient for the parties and witnesses involved. Finally, should the Court  
21 retain the matter, Plaintiff’s class claims should be stricken. For all of these reasons,  
22 Defendant respectfully requests that the Court dismiss Plaintiff’s Complaint for lack  
23 of personal jurisdiction and/or improper venue, or, in the alternative, transfer this  
24 action to the District of New Jersey or the Western District of Texas, or, in the  
25 alternative, strike Plaintiff’s class allegations.

26  
27  
28

1 Dated: May 31, 2019

Respectfully submitted,

2 By: /s/ Susan J. Welde

3 Susan J. Welde (SBN 205401)  
4 MURCHISON & CUMMING, LLP  
5 275 Battery Street, Suite 850  
6 San Francisco, CA 94111  
7 Telephone: (415) 524-4300  
8 Facsimile: (415) 391-2058  
9 ktownsend@murchisonlaw.com  
10 swelde@murchisonlaw.com

11 Tamra J. Miller (SBN 224040)  
12 Margaret M. Schuchardt (*pro hac vice*  
13 to be filed)  
14 JASZCZUK P.C.  
15 311 South Wacker Dr., Suite 3200  
16 Chicago, IL 60606  
17 Telephone: (312) 442-0312  
18 tmiller@jaszczuk.com  
19 mschuchardt@jaszczuk.com

20 Attorneys for Defendant JACKSON  
21 HEWITT TAX SERVICE INC.

1 **PROOF OF SERVICE**

2

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 At the time of service, I was over 18 years of age and not a party to this action.  
5 I am employed in the County of Los Angeles, State of California. My business  
6 address is 801 South Grand Avenue, Ninth Floor, Los Angeles, CA 90017-4613.

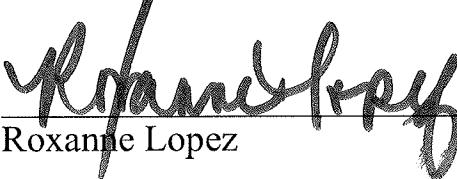
7 On May 31, 2019, I served true copies of the following document(s) described as  
8 **DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS,  
TRANSFER, OR STRIKE; MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATIONS OF MARGARET SCHUCHARDT AND  
AMORI LANGSTAFF IN SUPPORT; [PROPOSED] ORDER** the interested  
9 parties in this action as follows:

10 **SEE ATTACHED SERVICE LIST**

11 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Pursuant to the E-Filing  
12 System of the United States District Court, Central District of California, to the  
13 parties at the e-mail addresses on the Court's website.

14 I declare under penalty of perjury under the laws of the United States of  
15 America that the foregoing is true and correct and that I am employed in the office of  
16 a member of the bar of this Court at whose direction the service was made.

17 Executed on May 31, 2019, at Los Angeles, California.

18   
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

29 Roxanne Lopez

1 **SERVICE LIST**  
2 **Jeff Hancock vs. Jackson Hewitt Tax Service**  
2:19-cv-02602-PSG-PJW

3 James C Shah  
4 Shepherd Finkelman Miller and Shah  
5 LLP  
6 35 East State Street  
7 Media, PA 19063  
8 610-891-9880  
9 Fax: 866-300-7367  
10 Email: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)

11 Attorneys for Plaintiff Jeff Hancock

12 Alexander H Burke  
13 Burke Law Offices LLC  
14 155 North Michigan Avenue Suite 9020  
15 Chicago, IL 60601  
16 312-729-5288  
17 Fax: 312-729-5289  
18 Email: [ABurke@BurkeLawLLC.com](mailto:ABurke@BurkeLawLLC.com)  
19 PRO HAC VICE

20 Kolin Tang  
21 Shepherd Finkelman Miller and Shah  
22 LLP  
23 1401 Dove Street Suite 540  
24 Newport Beach, CA 92660  
25 323-510-4060  
26 Fax: 866-300-7367  
27 Email: [ktang@sfmslaw.com](mailto:ktang@sfmslaw.com)

28